



THE CITY OF NEW YORK
LAW DEPARTMENT
 100 CHURCH STREET
 NEW YORK, NY 10007

MICHAEL A. CARDOZO
 Corporation Counsel

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Barry K. Myrvold
 Special Federal Litigation
 (212) 788-9391
 (212) 788-9776 (fax)
 bmyrvold@law.nyc.gov

May 10, 2007

By U.S. Mail

Honorable Paul A. Crotty
 United States District Judge
 United States District Court
 Southern District of New York
 500 Pearl Street, Room 735
 New York, New York 10007

Application GRANTED, had
SO Ordered

Paul A. Crotty
 JCS

The City should submit a report as to why this case involving a Brooklyn resident whose alleged injury occurred in Brooklyn is not being tried in Brooklyn. Submit by May 15, 2007

Re: Darren Brooks by his f/n/g Dennis Smith and Denis Smith v. The City of New York, et al., 07 CV 3170 (PAC)

Your Honor:

I am an attorney in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for the defendant City of New York in this action. I am writing to respectfully request an extension of time from May 14, 2007 to July 13, 2007, to respond to the complaint on behalf of the City of New York.¹ Counsel for the plaintiffs, Michael Colihan, consents to this extension.

There are several reasons for seeking this sixty day extension of time to respond to the complaint. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. Here, it is alleged that on March 30, 2007, the infant plaintiff, Darren Brooks, was falsely arrested, maliciously prosecuted and subjected to excessive force resulting in a fractured nose and orbit.

¹ According to the docket sheet, the individually named defendants, Police Officers Brian Luckowski, John Acconi and Hector Morales, were recently served with the summons and complaint in this action (their answers are now due on May 23, 2007), but, as of this date, no requests for representation have been received from any of them. Without appearing on their behalf, it is respectfully requested that the same extension be granted to them in order to ensure that their defenses are not jeopardized while representation issues are being decided.

MEMO ENDORSED

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Currently, this office is in the process of forwarding to plaintiffs' counsel for execution a consent and authorization for the release of records that have been sealed pursuant to N. Y. Criminal Procedure Law § 160.50, if any. The executed release is necessary for our office to obtain the District Attorney, Criminal Court and police records pertaining to the infant plaintiff's alleged false arrest, and malicious prosecution. This office is also in the process of forwarding to plaintiffs' counsel for execution medical releases, which are necessary for our office to obtain the medical records pertaining to infant plaintiff's alleged injuries and treatment.

Further, the sixty-day extension is necessary to allow time for this office to determine, pursuant to N.Y. General Municipal Law § 50-k and based on a review of the facts of the case, whether we may represent the individual police officer defendants. *See Mercurio v. The City of New York, et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting *Williams v. City of New York, et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

Accordingly, we respectfully request that the City's time to respond to the complaint be extended until July 13, 2007. No previous request for an extension of time to respond to the complaint has been made in this action.

I thank the Court for its time and consideration of this request.

Respectfully submitted,



Barry K. Myrvold (BA16908)
Special Federal Litigation

cc: Michael Colihan, Esq.
Attorney for Plaintiffs

By U.S. Mail